



The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Regenesis Corporation  
1994 Maple Street  
West Hopkinton, NH 03229

Re: Solid Waste Permit No. DES-SW-SP-002  
Bio Energy Solid Waste Facility  
West Hopkinton

**NOTICE OF PROPOSED  
LICENSE ACTION  
No. 04-010**

November 22, 2004

**I. INTRODUCTION**

This Notice of Proposed License Action is issued by the Department of Environmental Services, Waste Management Division ("DES") to Regenesis Corporation, pursuant to RSA 541-A:30, II and Env-Wm 306.03. DES is proposing to revoke Solid Waste Permit No. DES-SW-SP-002 held by Regenesis Corporation for the Bio Energy Solid Waste Facility in West Hopkinton, NH based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Waste Management Division is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Regenesis Corporation ("Regenes") is a corporation registered to do business in New Hampshire having a mailing address of 1994 Maple Street, West Hopkinton, NH 03229.

**III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION**

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Pursuant to RSA 149-M:9, any person who wishes to construct, operate, or initiate closure of a public or private solid waste facility must first obtain a permit from DES.
3. Under RSA 149-M:9, IX(a), DES may deny a solid waste permit application if the applicant "fails to demonstrate sufficient reliability, expertise, integrity, and competence to operate a solid waste facility."
4. Under RSA 149-M:9, IX(c), DES may deny a solid waste permit application "[i]n the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding 10 percent or more of its equity or debt liability has been convicted of ... a felony in any state or federal court during the 5 years before the date of the permit application."
5. Pursuant to RSA 149-M:9, III, upon request of DES "the attorney general shall conduct a background investigation of the performance history and criminal record of the applicant and of its

officers and directors, if any, and make a report to the department."

6. Env-Wm 316 specifies which entities and individuals must complete personal history disclosure forms and what information must be provided, and directs that these forms be submitted directly to the Attorney General's Office ("AGO"), rather than to DES.

7. Env-Wm 303.14(a) and (b)(1) require an applicant for a solid waste permit to certify that no individual holding 10% or more of the applicant's debt or equity, and none of the applicant's officers, directors, partners or managers, have been convicted of a felony during the 5 years before the date of the application.

8. Env-Wm 316.02(a)(3) specifically requires certification under Env-Wm 303.14 for applications to transfer ownership or operational control of a solid waste facility. By operation of Env-Wm 315.08, which establishes the existing permittee and the proposed permittee as co-applicants for a permit transfer, the certification is required for both the existing permittee and the proposed permittee.

9. Env-Wm 303.15 provides that applicants unable to certify compliance pursuant to Env-Wm 303.14 must instead submit a compliance report explaining the circumstances which prevent certification and the reason(s) why those circumstances should not be grounds for denying the requested approval.

10. On October 9, 2001, Bio Energy Corporation submitted an application for a solid waste facility permit for a facility located at 2003 Maple Street in West Hopkinton, N.H. ("Bio Energy Facility").

11. On October 16, 2001, Anthony DiNapoli, also known as Antonio DiNapoli, submitted a Personal History Disclosure Form to the AGO in connection with Bio Energy Corporation's application.

12. Mr. DiNapoli's responses on the form included a sworn statement that he had no criminal record.

13. On October 18, 2001, Mr. DiNapoli was indicted in Hillsborough County Superior Court for witness tampering, a felony. Mr. DiNapoli entered a plea of Not Guilty on November 2, 2001.

14. On November 5, 2001, the AGO performed a criminal record check on Mr. DiNapoli. The search revealed no criminal record, and there was no indication of the recently filed charges. On March 20, 2002, the AGO conveyed the results of the Bio Energy background investigation to DES.

15. On March 25, 2002, Mr. DiNapoli was convicted in Hillsborough County Superior Court of witness tampering, a felony. The conviction was affirmed by the New Hampshire Supreme Court in State v. DiNapoli, 149 N.H. 514 (2003).

16. On May 28, 2002, DES issued Solid Waste Permit No. DES-SW-SP-002 ("the Permit") to Bio Energy, without knowledge of Mr. DiNapoli's felony conviction.

17. On August 30, 2002, Bio Energy Corporation filed Articles of Dissolution with the New Hampshire Secretary of State. Bio Energy did not inform DES of the dissolution.

18. On December 2, 2002, Bio Energy Corporation filed with DES an application to transfer the Permit to Regenesi ("the Transfer Application"). Both corporations gave the same mailing address of 1994 Maple Street, West Hopkinton, NH 03229. With the exception of Mr. DiNapoli, the officers and directors of Regenesi Corporation were the same as the officers and directors of Bio Energy.

19. On the Transfer Application, William Dell'Orfano signed, on behalf of both the existing permittee and the proposed permittee, the certification required under Env-Wm 303.14. Specifically, this included a certification that none of Bio Energy's officers or directors had been convicted of a felony during the five



years before the date of the application. None of the statements on either certification were circled as untrue, and no Compliance Reports or explanations were attached.

20. Nowhere on the transfer application did Bio Energy inform DES that the company had been dissolved.

21. On the transfer application, Mr. Dell'Orfano signed the following statement on behalf of both the existing permittee and the proposed new permittee: "To the best of my knowledge and belief, the information and material submitted herewith is correct and complete. I understand that any approval granted by DES based on false and/or incomplete information shall be subject to revocation or suspension, and that administrative, civil or criminal penalties may also apply."

22. Under Env-Wm 306.04(a), a permit shall be revoked if DES determines, following notice and opportunity for hearing, that there is good cause for revocation and that "[t]here are no circumstances by which the permittee can correct or eliminate the underlying problem ... ."

23. Env-Wm 306.05 specifies the circumstances which provide "good cause" for revoking a permit. These circumstances include violation of chapter RSA 149-M or the Solid Waste Rules (RSA 149-M:12, III; Env-Wm 306.05(a)), discovery that a permit was issued based on false or misleading information (Env-Wm 306.05(b)), or meeting any other criteria for permit denial (Env-Wm 306.05(c)).

24. Criteria for permit denial include the applicant's failure to demonstrate sufficient reliability, expertise, integrity, and competence to operate a solid waste facility, per RSA 149-M:9, IX(a).

25. Criteria for permit denial also include conviction of the permittee or one of its officers or directors during the five years prior to the application, per RSA 149-M:9, IX(c).

26. Because Mr. DiNapoli was an officer or director of Bio Energy when he was convicted of felony witness tampering on March 25, 2002, Mr. Dell'Orfano made a false or misleading statement when he certified on December 2, 2002 that none of Bio Energy's officers or directors had been convicted of a felony in the five years prior to the application for permit transfer. Further, it was misleading not to inform DES that the company holding the permit had been dissolved three months prior to the application.

27. DES's decision to transfer the permit was based on false or misleading information.

28. RSA 149-M9, VIII requires the applicant for a solid waste facility permit to notify abutters of the public hearing on the application in writing by certified mail, return receipt requested.

29. Env-Wm 303.05(d) requires that, if the applicant or the owner of the facility site owns any abutting parcel of land, the notice of filing shall be sent to the owner(s) of the next parcel(s) not owned by the applicant or facility site owner.

30. In a petition filed in the matter of Citizens for a Future New Hampshire v. Bio Energy, LLC, et al. (Merrimack County Superior Court No. 04-E-387), a citizens group ("CFNH") whose members allegedly include property owners near the Bio Energy Facility alleges that Bio Energy did not comply with Env-Wm 303.05(d).

31. CFNH alleges that certain companies owning property abutting the Bio Energy facility are under the same or related ownership as Bio Energy, and that the owners of property beyond those parcels should have received notice as abutters. Specifically, CFNH alleges that Bedford Corp., which owned two parcels abutting the Bio Energy parcels in December 2002 when Bio Energy applied to transfer the permit to Regenesis and in February 2003 when Regenesis applied to modify the permit, is affiliated with and

receives mail at the same address as Bio Energy and Regenesis. CFNH further alleges that certain residential property owners who own property abutting the Bedford Corp. parcels should have received notice of those applications under Env-Wm 303.05(d).

32. By statute, DES is charged with conducting fair and procedurally proper permit proceedings. Accordingly, CFNH's allegations are of concern to the agency. If true (and the agency by referencing them makes no admission or acknowledgment of their truth or falsity), the allegations could be grounds for reopening the permit transfer and modification proceedings, independent of the possible grounds for revocation described elsewhere in this notice.

33. Therefore, DES orders that, should Regenesis choose to contest the proposed revocation, the company also show cause why the original abutter notification was legally sufficient, and if not, why the applications should not be reopened to provide proper notice.

#### IV. VIOLATIONS ALLEGED

1. William Dell'Orfano made a false or misleading statement when he certified on December 2, 2002 that none of Bio Energy's officers or directors had been convicted of a felony in the five years prior to the application for permit transfer.

2. William Dell'Orfano's false or misleading statement to DES in the course of the permit proceedings calls into question whether Regenesis has the reliability and integrity to operate a solid waste facility.

#### V. PROPOSED ACTION

1. Under the circumstances, the permittee cannot correct the underlying problem. Therefore, DES proposes to revoke the Permit.

2. DES further orders Regenesis to show cause why, if the permit is not revoked, the 2003 application for permit modification should not be reopened based on inadequate notice to abutters.

#### VI. Hearing, Required Response

Regenesis has the right to a hearing to contest these allegations before the proposed license action is taken. A hearing on this matter has been scheduled for **Friday, January 7, 2005** beginning at **10:30 a.m.** in **Room C-112/113** of the DES offices at 29 Hazen Drive, Concord, N.H. This hearing shall also serve as the opportunity for Regenesis to show cause as provided in paragraph V.2, above.

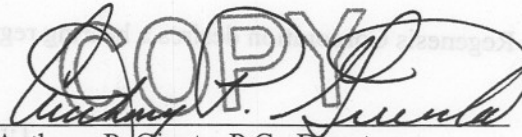
This hearing will be a formal adjudicative proceeding conducted pursuant to RSA 541-A:31 and Env-C 204. At the hearing, Regenesis and any witnesses Regenesis may call will have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing will be under oath and will be subject to cross examination.

RSA 541-A:31, III(e) provides that Regenesis has the right to have an attorney present to represent Regenesis at its own expense.

Regenesis may waive its right to a hearing. If Regenesis waives the hearing, DES will revoke the Permit upon receipt of the signed waiver and will notify Regenesis by certified mail, return receipt requested. Regenesis should notify DES of its decision by filling out and returning the enclosed form by **December 6, 2004**.

Pursuant to Env-Wm 306.03(c)(2)b., if Regenesis fails to appear at the hearing, the revocation will become effective as of the date of the hearing.

Anyone having questions regarding this matter should contact Senior Assistant Attorney General Jennifer J. Patterson at 271- 3679.

  
Anthony P. Giunta, P.G., Director  
Waste Management Division

Certified Mail #7000 0600 0023 9936 2199

Enclosure

cc: Board of Selectmen, Town of Hopkinton  
Hopkinton-Webster Solid Waste District  
Robert P. Cheney, Esq.  
Jennifer Patterson, Senior Assistant Attorney General  
Michael P. Nolin, Commissioner  
Gretchen Hamel, Legal Unit Administrator  
Mike Guilfooy, WMD



**RETURN THIS PAGE ONLY by December 6, 2004**

**APPEARANCE**

\_\_\_\_ Regenesis Corporation desires a hearing regarding the proposed Permit revocation.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

**WAIVER OF HEARING**

\_\_\_\_ On behalf of Regenesis Corporation, I certify that I understand Regenesis Corporation's right to a hearing regarding the revocation of the Permit and that Regenesis Corporation hereby waives those rights.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

Please return to: DES Legal Unit  
Attn: Michael Sclafani  
P.O. Box 95  
29 Hazen Drive  
Concord, NH 03302-0095